

notifications circulated to date by the SCM Committee show that India has never notified a subsidy for sugar under the SCM Agreement. We also note that India has not argued otherwise.

7.353. Above, we have found that, under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes, India grants subsidies contingent upon export performance within the meaning of Article 3.1(a) of the SCM Agreement.<sup>720</sup> Moreover, we recall that, under the said Schemes, India grants subsidies only to one part of its agricultural sector - the producers of sugar.<sup>721</sup> In this regard, we also note that, according to Article 2.3 of the SCM Agreement, subsidies falling under Article 3 are deemed to be specific. It follows that, by not notifying these export subsidies to the SCM Committee, India has acted inconsistently with its obligations under Articles 25.1 and 25.2 of the SCM Agreement.

7.354. In light of the above, we conclude that India has violated its obligation under Article 18.2 of the Agreement on Agriculture by failing to notify to the Committee on Agriculture its domestic support to sugarcane producers subsequent to the 1995-96 marketing year, as well as its export subsidies for sugar subsequent to the 2009-10 marketing year. We also find that by failing to notify to the SCM Committee its export subsidies for sugar under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes, India has violated its obligations under Articles 25.1 and 25.2 of the SCM Agreement.<sup>722</sup>

## 8 CONCLUSIONS AND RECOMMENDATIONS

### 8.1 Complaint by Brazil (DS579)

8.1. With respect to Brazil's claims regarding India's domestic support to sugarcane producers, we find that, for five consecutive sugar seasons, from 2014-15 to 2018-19, India provided non-exempt product-specific domestic support to sugarcane producers in excess of the permitted level of 10% of the total value of sugarcane production. Therefore, we find that India is acting inconsistently with its obligations under Article 7.2(b) of the Agreement on Agriculture.

8.2. With respect to Brazil's claims regarding India's export subsidies pertaining to sugar or sugarcane, we find that India's subsidies under the Production Assistance, the Buffer Stock, and the Marketing and Transportation Schemes are contingent on export performance within the meaning of Article 9.1(a) of the Agreement on Agriculture. Since India did not make export subsidy reduction commitments with respect to sugar in its Schedule, we find that India's subsidies contingent on export performance within the meaning of Article 9.1(a) are inconsistent with Articles 3.3 and 8 of the Agreement on Agriculture.

8.3. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with certain provisions of the Agreement on Agriculture, they have nullified or impaired benefits accruing to Brazil under that Agreement.

8.4. Pursuant to Article 19.1 of the DSU, we recommend that India bring its WTO-inconsistent measures into conformity with its obligations under the Agreement on Agriculture.

### 8.2 Complaint by Australia (DS580)

8.5. With respect to Australia's claims regarding India's domestic support to sugarcane producers we find that, for five consecutive sugar seasons, from 2014-15 to 2018-19, India provided non-exempt product-specific domestic support to sugarcane producers in excess of the permitted

<sup>720</sup> See paras. 7.327-7.328 above.

<sup>721</sup> For a detailed factual description of these four schemes, see section 7.2.2 above.

<sup>722</sup> In view of our finding that, by failing to notify its export subsidies for sugar, India has violated Articles 25.1 and 25.2 of the SCM Agreement, we do not consider it necessary to address Australia's assertion that India has also, in effect, violated Articles 25.3 and 25.4 of that Agreement. (See fn 697 to para. 7.335 above) Moreover, in light of our findings under the Agreement on Agriculture and the SCM Agreement, we do not consider it necessary to address Australia's alternative claims under Article XVI:1 of the GATT 1994.

level of 10% of the total value of sugarcane production. Therefore, we find that India is acting inconsistently with its obligations under Article 7.2(b) of the Agreement on Agriculture.

8.6. With respect to Australia's claims regarding India's export subsidies pertaining to sugar or sugarcane, we conclude that:

- a. India's subsidies under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes are contingent on export performance within the meaning of Article 9.1(a) of the Agreement on Agriculture. Since India did not make export subsidy reduction commitments with respect to sugar in its Schedule, India's subsidies contingent on export performance within the meaning of Article 9.1(a) are inconsistent with Articles 3.3 and 8 of the Agreement on Agriculture;
- b. Under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes, India provides subsidies contingent upon export performance, inconsistently with Articles 3.1(a) and 3.2 of the SCM Agreement.

8.7. With respect to Australia's claims regarding India's notification obligations, we conclude that:

- a. By failing to notify to the Committee on Agriculture its domestic support to sugarcane producers subsequent to the 1995-96 marketing year, as well as its export subsidies for sugar subsequent to the 2009-10 marketing year, India has acted inconsistently with its obligation under Article 18.2 of the Agreement on Agriculture;
- b. Australia has failed to demonstrate that India maintained certain buffer stock operations for sugar after the 1996-97 and 1997-98 marketing years, which India was allegedly required to notify under Article 18.3 of the Agreement on Agriculture after those marketing years. We therefore reject Australia's claim that India has acted inconsistently with Article 18.3 of the Agreement on Agriculture;
- c. By failing to notify to the SCM Committee its export subsidies for sugar under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes, India has acted inconsistently with its obligations under Articles 25.1 and 25.2 of the SCM Agreement.

8.8. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with certain provisions of the Agreement on Agriculture and the SCM Agreement, they have nullified or impaired benefits accruing to Australia under those Agreements.

8.9. Pursuant to Article 19.1 of the DSU, we recommend that India bring its WTO-inconsistent measures into conformity with its obligations under the Agreement on Agriculture and the SCM Agreement.

8.10. Furthermore, with respect to India's prohibited subsidies under Article 3.1(a) of the SCM Agreement, we recall Australia's request that the Panel recommend, in accordance with Article 4.7 of the SCM Agreement, that India withdraw those subsidies without delay within a time-period specified by the Panel.

8.11. In light of our conclusions above, and consistent with Article 4.7 of the SCM Agreement, we recommend that India withdraw its prohibited subsidies under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes within 120 days from the adoption of our Report.

### **8.3 Complaint by Guatemala (DS581)**

8.12. With respect to Guatemala's claims regarding India's domestic support to sugarcane producers we find that, for five consecutive sugar seasons, from 2014-15 to 2018-19, India provided non-exempt product-specific domestic support to sugarcane producers in excess of the permitted

level of 10% of the total value of sugarcane production. Therefore, we find that India is acting inconsistently with its obligations under Article 7.2(b) of the Agreement on Agriculture.

8.13. With respect to Guatemala's claims regarding India's export subsidies pertaining to sugar or sugarcane, we conclude that:

- a. India's subsidies under the Production Assistance, the Buffer Stock, and the Marketing and Transportation Schemes are contingent on export performance within the meaning of Article 9.1(a) of the Agreement on Agriculture. Since India did not make export subsidy reduction commitments with respect to sugar in its Schedule, India's subsidies contingent on export performance within the meaning of Article 9.1(a) are inconsistent with Articles 3.3 and 8 of the Agreement on Agriculture;
- b. Having found that India's Production Assistance, Buffer Stock, and Marketing and Transportation Schemes are inconsistent with Article 9.1(a) of the Agreement on Agriculture, we do not consider it necessary to address Guatemala's claim under Article 9.1(c) of the Agreement on Agriculture regarding the same Schemes;
- c. Under the Production Assistance, the Buffer Stock, and the Marketing and Transportation Schemes, India provides subsidies contingent upon export performance, inconsistently with Articles 3.1(a) and 3.2 of the SCM Agreement.

8.14. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with certain provisions of the Agreement on Agriculture and the SCM Agreement, they have nullified or impaired benefits accruing to Guatemala under those Agreements.

8.15. Pursuant to Article 19.1 of the DSU, we recommend that India bring its WTO-inconsistent measures into conformity with its obligations under the Agreement on Agriculture and the SCM Agreement.

8.16. Furthermore, with respect to India's prohibited subsidies under Article 3.1(a) of the SCM Agreement, we recall Guatemala's request that the Panel recommend, in accordance with Article 4.7 of the SCM Agreement, that India withdraw those subsidies without delay within a time-period specified by the Panel.

8.17. In light of our conclusions above, and consistent with Article 4.7 of the SCM Agreement, we recommend that India withdraw its prohibited subsidies under the Production Assistance, the Buffer Stock, and the Marketing and Transportation Schemes within 120 days from the adoption of our Report.

---